

UNITED STATES OF AMERICA,

Plaintiff,

v.

OHIO EDISON COMPANY,
PENNSYLVANIA POWER COMPANY,
subsidiaries of FIRSTENERGY
CORPORATION,

Defendants.

Civil Action No.

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

1. This is a civil action brought against the Defendants pursuant to Sections 113(b)(2) and 167 of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b)(2) and 7477, for injunctive relief and the assessment of civil penalties for violations of the Prevention of Significant Deterioration ("PSD") provisions and New Source Performance Standards ("NSPS") of the Act, 42 U.S.C. §§ 7470-92 and 7411, respectively. Numerous times, Defendants modified, and thereafter

operated, the W.H. Sammis coal-fired electricity generating power plant in Jefferson County, Ohio without first obtaining appropriate permits authorizing this construction and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act requires.

2. As a result of Defendants' operation of the Sammis power plant following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from this plant. Defendants' violations, alone and in combination with similar violations at other coal-fired electric power plants, have been significant contributors to some of the most severe environmental problems facing the nation today. An order of this Court directing these Defendants, forthwith, to install and operate the best available technology to control these pollutants, in conjunction with orders being sought in similar cases involving other coal-fired electrical power plants in the midwest and southern United States being filed by the United States concurrent with the filing of this complaint, will produce an immediate, dramatic improvement in the quality of air breathed by tens of millions of Americans. It will reduce illness, protect lakes and streams from further degradation due to the fallout from acid rain, and allow the environment to restore itself following years, and in some cases decades, of illegal emissions.

3. Sulfur dioxide, nitrogen oxides, and particulate matter when emitted into the air can each have adverse environmental and health impacts. Electric utility plants collectively account for about 70 percent of annual sulfur dioxide emissions and 30 percent of nitrogen oxides emissions in the United States. Sulfur Dioxide ("SO₂") interacts in the atmosphere to form

sulfate aerosols, which may be transported long distances through the air. Most sulfate aerosols are particles that can be inhaled. In the eastern United States, sulfate aerosols make up about 25 percent of the inhalable particles and according to recent studies, high levels of sulfate aerosols are associated with increased sickness and mortality from lung disorders, such as asthma and bronchitis. Lowering sulfate aerosol levels, lower emissions from electric utility plants may significantly reduce the incidence and the severity of asthma and bronchitis and associated hospital admissions and emergency room visits.

4. Nitrogen oxides ("NO_x") are major producers of ground level ozone, which scientists have long recognized as being harmful to human health. NO_x, transformed into ozone, may cause decreases in lung function (especially among children who are active outdoors) and respiratory problems leading to increased hospital admissions and emergency room visits. Ozone may inflame and possibly cause permanent damage to people's lungs. NO_x is also transformed into nitrogen dioxide ("NO₂"), a dangerous pollutant that can cause people to have difficulty breathing by constricting lower respiratory passages; it may weaken a person's immune system, causing increased susceptibility to pulmonary and other forms of infections. While children and asthmatics are the primary sensitive populations, individuals suffering from bronchitis, emphysema, and other chronic pulmonary diseases have a heightened sensitivity to NO₂ exposure. NO_x also reacts with other pollutants and sunlight to form photochemical smog, which in turn contributes to haze and reduces visibility.

5. SO₂ and NO_x interact in the atmosphere with water and oxygen to form nitric and sulfuric acids, commonly known as acid rain. Acid rain, which also comes in the form of snow or sleet, "acidifies" lakes and streams rendering them uninhabitable by aquatic life, and it

contributes to damage of trees at high elevations. Acid rain accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. SO₂ and NO_x gases and their particulate matter derivatives, sulfates and nitrates, contribute to visibility degradation and impact public health. In this civil action, and in other civil actions filed concurrent with it, the United States intends to reduce dramatically, the amount of SO₂ and NO_x that certain electric utility plants have been illegally releasing into the atmosphere. If the injunctive relief requested by the United States is granted in this case, and in others being filed concurrent with it, many acidified lakes and streams will improve so that they may once again support fish and other forms of aquatic life. Visibility will improve, allowing for increased enjoyment of scenic vistas throughout the eastern half of our country. Stress to our nation's forests from Maine to Georgia will be reduced. Deterioration of our historic buildings and monuments will be slowed. In addition, reductions in SO₂ and NO_x will reduce sulfates, nitrates, and ground level ozone, leading to improvements in public health.

6. Particulate matter is the term for solid or liquid particles found in the air. Smaller particulate matter of a diameter of 10 micrometers or less is referred to as PM-10. Power plants are a major source of particulate matter ("PM"). Breathing PM at concentrations in excess of existing ambient air standards may increase the chances of premature death, damage to lung tissue, cancer, or respiratory disease. The elderly, children, and people with chronic lung disease, influenza, or asthma, tend to be especially sensitive to the effects of PM. PM can also make the effects of acid rain worse, reducing visibility and damaging man-made materials. Reductions in PM illegally released into the atmosphere by the defendants and others will significantly reduce the serious health and environmental effects caused by PM in our atmosphere.

JURISDICTION AND VENUE

7. This Court has jurisdiction of the subject matter of this action pursuant to Sections 113(b) and 167 of the Act, 42 U.S.C. §§ 7413(b) and 7477, and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

8. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the violations alleged occurred in this District, and the Defendants reside in this District.

NOTICES

9. The United States is providing notice of the commencement of this action to the State of Ohio as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

THE DEFENDANTS

10. Ohio Edison Company (“Ohio Edison”) is an owner and an operator of the W.H. Sammis Station (“Sammis Station”) coal fired electric generation plant in Jefferson County, Ohio. Sammis Station generates electricity from seven steam generating boilers which are designated Sammis Units one through seven. Ohio Edison is a wholly owned subsidiary of FirstEnergy Corp. Ohio Edison is an Ohio Corporation. Ohio Edison is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

11. Pennsylvania Power Company (“Pennsylvania Power”) is an owner of the Sammis Station. Pennsylvania Power is a wholly owned subsidiary of Ohio Edison. Pennsylvania Power is a Pennsylvania corporation. Pennsylvania Power is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

STATUTORY BACKGROUND

12. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

13. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for those air pollutants for which air quality criteria have been issued pursuant to section 108, 42 U.S.C. § 7408. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

14. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

15. At times relevant to this complaint, the Sammis Station was located in an area, Jefferson County, Ohio, that had been classified as attainment or unclassifiable for one or more of the following pollutants: NO_x, SO₂, PM-10 and PM.

The Prevention of Significant Deterioration Requirements

16. Part C of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. These provisions are referred to herein as the "PSD program."

17. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment unless a permit has been issued that comports with the requirements of Section 165, including the requirement that the facility be installed to operate the best available control technology for each pollutant subject to regulation under the Act that is emitted from the facility. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input and that emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

18. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant

emitted by such source or which results in the emission of any air pollutant not previously emitted.”

New Source Performance Standards

19. Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

20. Section 111(b)(1)(B) of the Act, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2). These standards are known as New Source Performance Standards ("NSPS").

21. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the applicable NSPS to such source.

22. Pursuant to Sections 111 and 114 of the Act, 42 U.S.C. §§ 7411, 7414, EPA promulgated 40 C.F.R. Part 60, Subpart A, §§ 60.1 - 60.19, which contains general provisions regarding NSPS.

23. 40 C.F.R. § 60.1 states that the provisions of 40 C.F.R. Part 60 apply to the owner or operator of any stationary source which contains an affected facility, the construction,

reconstruction, or modification of which is commenced after the publication in Part 60 of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

24. 40 C.F.R. § 60.2 defines "affected facility" as any apparatus to which a standard is applicable.

25. Pursuant to Section 111(b)(1)(A) of the Act, 42 U.S.C. § 7411(b)(1)(A), at 40 C.F.R. §§ 60.40a-49a (Subpart Da) EPA has identified electric utility steam generating units as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

26. EPA's general NSPS provisions apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60. EPA has also promulgated NSPS for various industrial categories, including electric utility steam generating units. NSPS requirements for electric utility steam generating units for which construction or modification is commenced after September 18, 1978, are codified at 40 C.F.R. Part 60, Subpart Da, §§ 60.40a-49a.

27. The "affected facilities" to which Subpart Da applies are each "electric utility steam generating unit" that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction or modification is commenced after September 18, 1978. 40 C.F.R. § 60.40a.

28. Under Subpart Da, "steam generating unit" means any furnace, boiler, or other device, other than nuclear steam generators, used for combusting fuel for the purpose of

producing steam, including fossil-fuel-fired steam generators associated with combined cycle gas turbines. 40 C.F.R. § 60.41a.

29. An “electric utility steam generating unit”, under Subpart Da, means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt (“MW”) electrical output to any utility power distribution system for sale. 40 C.F.R. § 60.41a.

30. “Modification” under NSPS is defined as “any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.” 40 C.F.R. § 60.2. Under NSPS, any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of Section 111 of the Act, 42 U.S.C. § 7411. 40 C.F.R. § 60.14(a). Following the promulgation of 40 C.F.R. § 60.14(h) in July, 1992, no physical change, or change in method of operation, is treated as a modification of an existing electric steam generating unit if such change does not increase the maximum hourly emissions of a pollutant to which a standard applies above the maximum hourly emissions achievable at the unit during the 5 years prior to the change. 40 C.F. R. § 60.14(h).

31. Under 40 C.F.R. § 60.14, upon modification, an existing facility becomes an “affected facility” for which the applicable NSPS must be satisfied.

32. Section 111(e) of the Act, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the Act.

33. Pursuant to 40 C.F.R. § 60.7(a), any owner or operator of an affected facility subject to NSPS must furnish written notification to EPA of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change.

34. Pursuant to 40 C.F.R. § 60.8, the owner or operator of an affected facility that is an electric utility steam generating unit must conduct a performance test in accordance with 40 C.F.R. § 60.48a within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and furnish EPA a written report of the results of such performance test.

35. Pursuant to 40 C.F.R. §§ 60.49a(b) and (i), the owner or operator of an electric utility steam generating unit subject to Subpart Da must submit quarterly reports to EPA containing certain emissions information.

36. Pursuant to 40 C.F.R. §§ 60.43a(a) and 60.44a(a), the owner or operator of an electric utility steam generating unit subject to Subpart Da, may not discharge into the atmosphere from the affected facility any gases which contain SO₂ or NO_x, respectively, in excess of the applicable limitations.

ENFORCEMENT PROVISIONS

37. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that “Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter . . . the Administrator may ... bring a civil action in accordance with subsection (b) of this subsection”

38. Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, against any person whenever such person has violated, or is in violation of, requirements of the Act other than those specified in Section 113(b)(1), 42 U.S.C. § 7413(b)(1), including violations of Section 165(a), 42 U.S.C. § 7475(a) and Section 111, 42 U.S.C. § 7411.

39. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements.

40. At all times pertinent to this civil action, Sammis Station was a “major emitting facility” and a “major stationary source,” within the meaning of the Act for NO_x, SO₂, and PM. Sammis Unit 6 is an “affected source” that is subject to the requirements of NSPS.

FIRST CLAIM FOR RELIEF (PSD Violations)

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. At various times, Defendants commenced construction of modifications, as defined in the Act, at Sammis Station. These modifications included, but are not limited to: (1) replacing the reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Sammis Unit 1 in 1993; (2) replacing the reheater, furnace ash hopper boiler tubes, and secondary superheater outlet header of Sammis Unit 2 in 1991; (3) replacing the reheater, furnace ash hopper boiler tubes, secondary superheater outlet header, front wall south cell boiler tubes, radiant downflow tubes, and furnace south sidewall tubes of Sammis Unit 3 in 1992; (4) replacing the furnace ash hopper boiler tubes, waterwall tubes, superheater third pass outlet header, and superheater control condenser tubes of Sammis Unit 4 in 1990; (5) replacing the vertical tube furnace with a spiral tube furnace on Sammis Unit 5 in 1984; (6) replacing the economizer, secondary superheater outlet pendant, and reheater outlet bank of Sammis Unit 5 in 1990; (7) replacing the horizontal reheater and economizer of Sammis Unit 6 in 1987; (8) replacing the burners, front and rear waterwall tubes, reheater riser and pendant tubes, first through third pass mix area walls, and coal pulverizer pipes of Sammis Unit 6 in 1992; (9) replacing the coal pulverizers of Sammis Unit 6 in 1998; (10) replacing the economizer, horizontal reheater, reheater riser tubes, turbine rotors, and front ash hopper tubes of Sammis Unit 7 in 1989; and (11) replacing the waterwall panels of Sammis Unit 7 in 1991. Defendants constructed additional modifications to their plants beyond those described in this paragraph.

43. Defendants violated and continue to violate Section 165(a) and 167 of the Act, 42 U.S.C. §§ 7475(a) and 7477, by, among other things, undertaking such “modifications” and

continuing to operate the Sammis Station without (1) obtaining a PSD permit; and (2) applying best available control technology for NO_x, SO₂, and PM, as required.

44. Unless restrained by an order of this Court, these and similar violations of the Act will continue.

45. As provided in Section 113(b)(2) of the Act, 42 U.S.C. § 7413(b)(2), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendants to injunctive relief and civil penalties of up to \$25,000 per day for each violation prior to January 30, 1997, and \$27,500 per day for each such violation after January 30, 1997, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

SECOND CLAIM FOR RELIEF
(NSPS violations)

46. Paragraphs 1 through 45 are realleged and incorporated herein by reference.

47. Defendant Ohio Edison is the "owner or operator," within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of an electric utility steam generating unit within the meaning of 40 C.F.R. §§ 60.40a and 60.41a, designated Sammis Unit 6, located at Sammis Station.

48. Sammis Unit 6 is an "affected facility" under Subparts A and Da of NSPS and is subject to the NSPS, including provisions of Subpart A and Da of the NSPS.

49. At various times, Defendant Ohio Edison undertook the "modification" of an "affected facility" at Sammis Station Unit 6 as those terms are defined in the NSPS. 40 C.F.R. § 60.2. These modifications include replacing the burners of Sammis Unit 6 in 1992 and replacing the coal pulverizers of Sammis Unit 6 in 1998. Each of these modifications increased the gross Megawatt generation capacity at Sammis Unit 6 and the maximum hourly emission rate of PM,

SO₂, and NO_x from Sammis Unit 6 above the maximum hourly emissions achievable at that unit during the applicable time period prior to the change.

50. With regard to each modification of Unit 6, Defendant Ohio Edison failed to furnish written notification to EPA of the physical changes to the Unit which may have increased the emission rate of any air pollutant to which a standard applies postmarked 60 days or as soon as practicable before the change is commenced with information describing the precise nature of the change, present and proposed emission control systems, productive capacity of the facility before and after the change, and the expected completion date of the change as required by 40 C.F.R. § 60.7(a).

51. Defendant Ohio Edison failed to conduct a performance test in accordance with the procedures required by § 60.48a within 60 days after achieving the maximum production rate or within 180 days after initial startup at Sammis Unit 6 and furnish a written report of the results of such performance test to EPA after each of the modifications in violation of 40 C.F.R. § 60.8.

52. Defendant Ohio Edison failed to report emission information following the modifications listed above in violation of 40 C.F.R. §§ 60.49a(b) and (i).

53. Defendant Ohio Edison failed to comply and continues to fail to comply with the NSPS emissions limitations applicable to Unit 6 for at least one of the following pollutants -- PM, SO₂, and NO_x, and -- after the modifications listed above in violation of 40 C.F.R. §§ 60.42a, 60.43a, and 60.44a.

54. Each day that Defendant Ohio Edison fails to comply with each of the NSPS requirements described in this Complaint constitutes a violation of the NSPS regulations and the Act.

55. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Defendant Ohio Edison is subject to injunctive relief and civil penalties up to \$25,000 per day of violation for violations occurring on or before January 30, 1997 and \$27,500 per day for each such violation occurring after January 30, 1997 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701. Unless enjoined by this Court, Defendant Ohio Edison will continue to violate the requirements of the NSPS and the Act.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations contained in paragraphs 1 through 55 above, the United States of America requests that this Court:

1. Permanently enjoin the Defendants from operating the Sammis Station , except in accordance with the Act and any applicable regulatory requirements;
2. Order Defendants to remedy their past violations by, among other things, requiring Defendants to install, as appropriate, the best available control technology on the Sammis Station for each pollutant subject to regulation under the Act;
3. Order Defendants to apply for a permit that is in conformity with the requirements of PSD provisions of the Act;
4. Order Defendants to comply with the NSPS provisions of the Act;
5. Order Defendants to conduct audits of their operations to determine if additional modifications have occurred which would require them to meet the requirements of PSD and NSPS and report the results of these audits to the United States;

6. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

7. Assess a civil penalty against Defendants of up to \$25,000 per day for each violation of the Act and applicable regulations, and \$27,500 per day for each such violation after January 30, 1997;

8. Award Plaintiff its costs of this action; and

9. Grant such other relief as the Court deems just and proper.

Respectfully Submitted,

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